

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Daniel Mark Mixson,)	
)	C/A No. 2:10-3040-MBS
Plaintiff,)	
)	
vs.)	
)	O R D E R
Marco T. Torres,)	
)	
Defendant.)	
_____)	

Plaintiff Daniel Mark Mixson is a pretrial detainee who currently is housed at the Charleston County Detention Center in Charleston, South Carolina. Plaintiff, proceeding pro se, brought this action pursuant to 42 U.S.C. § 1983 against his court-appointed attorney, Defendant Marco T. Torres. Plaintiff alleges that his constitutional rights have been violated in various respects and seeks dismissal of the criminal charges pending against him.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the within action was referred to United States Magistrate Judge Paige J. Gossett for pretrial handling. On February 7, 2011, the Magistrate Judge issued a Report and Recommendation in which she noted that Plaintiff cannot proceed against his court-appointed attorney because the attorney has not acted under color of state law. See Hall v. Quillen, 631 F.2d 1154, 1155-56 n.2-3 (4th Cir. 1980). The Magistrate Judge further noted that (1) Plaintiff's demand to have the pending criminal charges against him dismissed is cognizable only in a habeas action, see Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); and (2) absent extraordinary circumstances, federal courts are not authorized to interfere with a state's pending criminal proceedings, Younger v. Harris, 401 U.S. 37 (1971). Accordingly, the Magistrate Judge recommended that Plaintiff's complaint be summarily dismissed. Plaintiff filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has carefully reviewed the record. The court adopts the Report and Recommendation and incorporates it herein by reference. The complaint is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

March 15, 2011.